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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-63

In the Matter of

Amendment of Section 73.202(b), RM-8450
Table of Allotments.
FM Broadcast Stations.
(Rocky Mount and Bassett, Virginia)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 14, 1994; Released: June 28, 1994

Comment Date: August 19, 1994

Reply Comment Date: September 3, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by WNLB Radio, Inc. ("petitioner"), licensee of Station WZBB-FM, Channel 260A, Rocky Mount, Virginia, proposing the substitution of Channel 260C3 for Channel 260A, the reallocation of Channel 260C3 from Rocky Mount to Bassett, Virginia, and the modification of petitioner's license to specify Bassett as Station WZBB-FM's community of license. Petitioner states it will apply for Channel 260C3 at Bassett, if allotted.

2. Petitioner seeks modification of Station WZBB-FM's license pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the licensee of an existing station a higher class channel and/or a new community of license without affording other interested parties an opportunity to file competing expressions of interest. Petitioner contends that the adoption of its proposal will result in a preferential arrangement of allotments by bringing a first local transmission service to Bassett while Rocky Mount would retain local aural transmission from Stations WNLB-AM and WYTI-AM. In support of its request, petitioner states WZBB-FM is precluded from upgrading its facility at Rocky Mount and adoption of its proposal would result in service to 80.2% more area and 100.2% more population. Moreover, it asserts its proposal would not result in the creation of any underserved area. Petitioner also states that Bassett is a census designated place ("CDP") with a 1990 U.S. Census population of 1,579 persons, noting until recently Bassett was the city of license for Station WODY-AM, thereby demonstrating that Bassett is a licensable community within the meaning of the Commission's allotment criteria, citing, e.g., *North Naples, Florida*,

41 RR2d 1549 (1977). Petitioner further states that Bassett has a U.S. post office, one high school, a rescue squad and volunteer fire department. Bassett has numerous community and civil organizations, including the Bassett Community Center, Toastmaster Club, Jaycees, Moose Lodge and Ruritan Lodge. There are churches, and some businesses which identify themselves with the community of Bassett. Petitioner claims that the resulting service improvement will enable WZBB-FM to serve a population of 164,933 persons, in comparison to its present service to 82,192 persons, and will overcome the existing preclusion to improved service which WZBB-FM now faces.

3. Based on the information before us, we are unable to determine whether petitioner's proposal would result in a preferential arrangement of allotments. According to petitioner, Bassett has no local aural transmission service licensed to the community while Rocky Mount has two AM stations and one FM station. However, our review indicates that Bassett is served by Station WCBX-AM, thereby petitioner's claim of providing a first local aural transmission service to Bassett is in fact a proposal for an additional local service to the community. While we tentatively acknowledge petitioner's claim that its proposal might provide service to a larger population, we must take into account the fact that an existing service will be deleted from a community. With respect to evaluating proposals to change community of license, the Commission has stated, "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another." See *Community of License MO&O*, 5 FCC Rcd at 7097 (1990); see also, *Report and Order (Eatonton and Sandy Springs, Georgia; Anniston and Lineville, Alabama)*, 6 FCC Rcd 6580 (1991), *app. for rev. pend.* Since we are concerned with the loss of service to the community of Rocky Mount, we request petitioner to submit any additional information as to the overall public interest benefits that would be advanced from the grant of this proposal. In addition, we request that the petitioner provide information showing the areas and populations which will receive new service and the areas and populations which will lose existing service if Channel 260C3 is reallocated to Bassett. The study should also indicate the number of reception services which are now available within the gains and loss areas.

4. We believe the public interest would be served by proposing the substitution of Channel 260C3 for Channel 260A and the reallocation of Channel 260C3 from Rocky Mount to Bassett since it could provide Bassett with a second local aural transmission service. Channel 260C3 can be allotted to Bassett in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.0 kilometers (6.2 miles) northwest to accommodate petitioner's desired site.¹

5. In light of the above, we shall propose to modify Station WZBB-FM as requested, to specify Bassett, Virginia, as its community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules,

¹ The coordinates for Channel 260C3 at Bassett are North Latitude 36-48-47 and West Longitude 80-04-41. We recognize that the allotment of Channel 260C3 to Bassett conflicts with the presently licensed operation of Station WRFX-FM, Channel 259C, Kannapolis, North Carolina. However, on May 16, 1994,

Station WRFX-FM's application for license to cover its construction permit (BPH-920903IL) was granted, thereby eliminating any conflict with this proceeding. The licensee of Station WRFX-FM will be served with a copy of this Notice.

we shall not accept competing expressions of interest nor require that petitioner demonstrate the availability of an additional equivalent channel at Rocky Mount.

6. The Commission believes it would be in the public interest to seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

		Channel No.
City	Present	Proposed
Rocky Mount, Virginia	260A	---
Bassett, Virginia	---	260C3

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **August 19, 1994**, and reply comments on or before **September 3, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Peter Gutmann
Pepper & Corazzini
1776 K Street, N.W.
Suite 200
Washington, D.C. 20006
(Counsel for petitioner)

9. *IT IS ORDERED*, That the Secretary of the Commission *SHALL SEND* a copy of this *Notice* by Certified Mail, Return Receipt Requested, to: Pyramid Communications-Charlotte FM License Corporation, 245 Park Avenue, 40th Floor, New York, New York 10167 (Licensee of Station WRFX-FM).

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202)634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. How-

ever, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required*. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures*. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments: Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.